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5  
6 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

7 CAROLYN MITCHELL, )  
8 Plaintiff, )  
9 vs. )  
10 ANCHORAGE POLICE DEPARTMENT and the )  
11 MUNICIPALITY OF ANCHORAGE, a )  
12 municipal corporation, WALTER MONEGAN, )  
13 Officer HENIKMAN, and Officer J. VOSS, )  
Defendants. )

14 Case No. 3:05-cv-00273-JWS

15 **PLAINTIFF'S MOTION FOR RECONSIDERATION/  
MOTION CLARIFYING REQUEST FOR SUMMARY JUDGMENT**

16 On October 30, 2007, at docket 72, this Court entered its Order and Opinion  
17 concerning a motion for summary judgment filed by defendants, and a motion for  
18 partial summary judgment filed by the plaintiff, Carolyn Mitchell. Having reviewed  
19 the court's opinion, Mitchell now files this motion requesting reconsideration of her  
20 motion for partial summary judgment. The court neither granted nor denied  
21 Mitchell's motion, citing her failure to clarify what claim she sought from the court.  
22 This motion will attempt to clarify Mitchell's position, thereby enabling the court to  
23 render its ruling on her motion.  
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25  
26 In its opinion, the court points to an apparent discrepancy in Mitchell's  
27

1 argument for partial summary judgment. The court states that Mitchell's initial  
2 briefing (Doc. 53) requested partial summary judgment on the issue of false arrest.  
3 Doc. 72, at 9. Then the court notes that her reply brief (Doc. 66) states that her  
4 "motion for partial summary judgment is premised on the legal theory of 'unlawful  
5 seizure . . .'" Doc. 72, at 9. Mitchell recognizes that the two briefs she submitted  
6 outwardly seem to identify two different legal theories. For this confusion, Mitchell  
7 apologizes to the court, and will make an effort at clarifying the confusion created by  
8 her reply brief.  
9

10  
11 In her reply brief (Doc. 66), Mitchell did not reference article I, section 14, of  
12 Alaska's Constitution in order to state her cause of action. Rather, Mitchell  
13 referenced the unlawful search and seizure clause of Alaska's constitution, in order  
14 to counter an argument advanced by the defendants in their opposition brief (Doc.  
15 61). In its opposition brief, defendants argued that Mitchell improperly cited  
16 Alaska's statute for defining "arrest." (Doc. 61, at 2). In response to defendants  
17 argument, Mitchell attempted to identify that Alaska courts identified when an arrest  
18 occurred differently when dealing with an unlawful search and seizure issue than  
19 when addressing a issue dealing with a speedy trial. In retrospect, the distinction  
20 seems inapposite to the tort of false arrest, and it obviously created confusion for the  
21 court.  
22

23  
24 The tort of false arrest does not rely on AS 12.25.160, as defendants alleged  
25 in their opposition brief. Mitchell acknowledges that in order to prove false arrest as  
26 a matter of law, she must establish (1) restraint upon her freedom, (2) without proper  
27

1 legal authority. In her reply brief, Mitchell referenced Alaska's constitution as a  
2 means of proving that the restraint upon her freedom occurred *without proper legal*  
3 *authority*. By invoking article I, section 14, of Alaska's Constitution, Mitchell  
4 merely argued that the constitutional basis for false arrest is distinct from an  
5 argument centered around the right to a speedy trial (article I, section 11).  
6

7 As clarification, Mitchell's request for partial summary judgment is limited  
8 solely to whether a *false arrest* occurred on May 8, 2004. Further, Mitchell believes  
9 that the elements for the tort of false arrest are whether there occurred (1) a restraint  
10 upon her freedom, (2) without proper legal authority. (See: Doc. 53, at 8).  
11

12 With that clarification concerning what she is pursuing, Mitchell requests that  
13 this court reconsider her motion for partial summary judgment on the issue of false  
14 arrest. The relevant facts concerning whether a restraint on her freedom occurred,  
15 and whether such a restraint occurred without proper legal authority, are all  
16 undisputed. As such, Mitchell requests that this court enter judgment as a matter of  
17 law in her favor on the issue of whether defendants Officer Justin Voss and Ross  
18 Henikman falsely arrested her on May 8, 2004.  
19

20 Respectfully submitted this 6<sup>th</sup> day of November 2007.  
21

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1                    Certificate of Service

2                    I hereby certify that on November 6, 2007  
3                    I electronically filed the foregoing with  
4                    the Clerk of Court using the CM/ECF  
5                    system which sent notification to the  
6                    following:

7                    Joyce Weaver Johnson

8                    and I hereby certify that I have mailed by  
9                    United States Postal Service the document  
10                   to the following non CM/ECF participants:

11                   none.

12                   Dated this 6<sup>th</sup> day of November, 2007, at Anchorage, Alaska.

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